

AMENDED IN ASSEMBLY MAY 17, 2016

AMENDED IN ASSEMBLY MAY 2, 2016

AMENDED IN ASSEMBLY APRIL 6, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2625

Introduced by Assembly Member Lopez

February 19, 2016

An act to amend Sections 17935, 17941, 17948, and 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2625, as amended, Lopez. Corporation taxes: minimum franchise tax: annual tax: microbusiness.

Existing law imposes an annual minimum franchise tax, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state or doing business in this state. Existing law exempts a corporation that incorporates or qualifies to do business in this state from the payment of the minimum franchise tax in its first taxable year.

Existing law imposes an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability company, and limited liability partnership that is doing business in this state or that has filed or registered with the Secretary of State.

The minimum franchise tax imposed on a corporation, and the annual tax imposed on a limited liability company, must be paid by the 15th day of the 4th month of the taxable year. The annual tax imposed on a

limited partnership or on a limited liability partnership, partnership must be paid by the original due date of the partnership return.

This bill, for taxable years beginning on or after January 1, 2017, *and on or before January 1, 2020*, would reduce that minimum franchise tax *of a new microbusiness, as defined*, to specified amounts, ~~in the 2nd, 3rd, 4th, and 5th taxable years, amounts for the taxable years immediately following its first taxable year that begin on or before January 1, 2020, for a corporation that is a new microbusiness, or that~~ annual tax, for each of the ~~first 5 initial taxable years of its existence, existence that begin on or before January 1, 2020, for a limited liability company, limited partnership, or limited liability partnership that is a new microbusiness, as defined.~~ *as specified.*

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17935 of the Revenue and Taxation Code
 2 is amended to read:
 3 17935. (a) For each taxable year beginning on or after January
 4 1, 1997, every limited partnership doing business in this state, as
 5 defined by Section 23101, and required to file a return under
 6 Section 18633 shall pay annually to this state a tax for the privilege
 7 of doing business in this state in an amount equal to the applicable
 8 amount specified in paragraph (1) of subdivision (d) of Section
 9 23153.
 10 (b) (1) In addition to any limited partnership that is doing
 11 business in this state and therefore is subject to the tax imposed
 12 by subdivision (a), for each taxable year beginning on or after
 13 January 1, 1997, every limited partnership that has executed,
 14 acknowledged, and filed a certificate of limited partnership with
 15 the Secretary of State pursuant to Section 15621 or 15902.01 of
 16 the Corporations Code, and every foreign limited partnership that
 17 has registered with the Secretary of State pursuant to Section 15692
 18 or 15909.01 of the Corporations Code, shall pay annually the tax
 19 prescribed in subdivision (a). The tax shall be paid for each taxable
 20 year, or part thereof, until a certificate of cancellation is filed on
 21 behalf of the limited partnership with the office of the Secretary

1 of State pursuant to Section 15902.03 or 15909.07 of the
2 Corporations Code.

3 (2) If a taxpayer files a return with the Franchise Tax Board that
4 is designated its final return, that board shall notify the taxpayer
5 that the tax imposed by this chapter is due annually until a
6 certificate of cancellation is filed with the Secretary of State
7 pursuant to Section 15902.03 or 15909.07 of the Corporations
8 Code.

9 (c) The tax imposed by this chapter shall be due and payable
10 on the date the return is required to be filed under former Section
11 18432 or 18633.

12 (d) For purposes of this section, “limited partnership” means
13 any partnership formed by two or more persons under the laws of
14 this state or any other jurisdiction and having one or more general
15 partners and one or more limited partners.

16 (e) Notwithstanding subdivision (b), any limited partnership
17 that ceased doing business prior to January 1, 1997, filed a final
18 return with the Franchise Tax Board for a taxable year ending
19 before January 1, 1997, and filed a certificate of dissolution with
20 the Secretary of State pursuant to Section 15623 of the
21 Corporations Code prior to January 1, 1997, shall not be subject
22 to the tax imposed by this chapter for any period following the
23 date the certificate of dissolution was filed with the Secretary of
24 State, but only if the limited partnership files a certificate of
25 cancellation with the Secretary of State pursuant to Section 15623
26 of the Corporations Code. In the case where a notice of proposed
27 deficiency assessment of tax or a notice of tax due (whichever is
28 applicable) is mailed after January 1, 2001, the first sentence of
29 this subdivision shall not apply unless the certificate of cancellation
30 is filed with the Secretary of State not later than 60 days after the
31 date of the mailing of the notice.

32 (f) (1) Notwithstanding subdivision (a) or (b), for taxable years
33 beginning on or after January 1, 2017, *and on or before January*
34 *1, 2020*, every limited partnership that is a new microbusiness
35 shall, for each of the ~~first five~~ *initial* taxable years of its existence
36 *that begin on or before January 1, 2020, not to exceed five taxable*
37 *years*, for which it qualifies as a new microbusiness, pay to the
38 state an annual tax of:

39 (A) Two hundred dollars (\$200) for a new microbusiness that
40 has gross receipts, less returns and allowances, derived from or

1 attributable to this state for the taxable year of fifty thousand dollars
2 (\$50,000) or less.

3 (B) Four hundred dollars (\$400) for a new microbusiness that
4 has gross receipts, less returns and allowances, derived from or
5 attributable to this state for the taxable year of one hundred
6 thousand dollars (\$100,000) or less, but more than fifty thousand
7 dollars (\$50,000).

8 (C) Six hundred dollars (\$600) for a new microbusiness that
9 has gross receipts, less returns and allowances, derived from or
10 attributable to this state for the taxable year of one hundred fifty
11 thousand dollars (\$150,000) or less, but more than one hundred
12 thousand dollars (\$100,000).

13 (2) For purposes of this subdivision, the following definitions
14 shall apply:

15 (A) (i) “Gross receipts, less returns and allowances,” means
16 the sum of the gross receipts from the production of business
17 income, as defined in subdivision (a) of Section 25120, and the
18 gross receipts from the production of nonbusiness income, as
19 defined in subdivision (d) of Section 25120.

20 (ii) “Gross receipts, less returns and allowances, derived from
21 or attributable to this state” shall be determined using the rules for
22 assigning sales under Sections 25135 and 25136 and the regulations
23 thereunder, as modified by the regulations under Section 25137,
24 other than those provisions that exclude receipts from the sales
25 factor.

26 (B) “New microbusiness” means a limited partnership that on
27 or after January 1, 2017, is organized under the laws of this state
28 or has qualified to transact intrastate business in this state and has
29 first commenced doing business in this state on or after the time
30 of its organization. In determining whether the taxpayer has first
31 commenced doing business in this state during the taxable year,
32 subdivision (f) of Section 17276, without application of paragraph
33 (7) of that subdivision, shall apply, except that “new
34 microbusiness” shall be substituted for “new business.”

35 (3) For purposes of this subdivision, the gross receipts derived
36 from or attributable to the state of any other business, in whatever
37 form conducted, that is owned, directly or indirectly, by persons,
38 within the meaning of Section 17007, that are treated as related,
39 within the meaning of Section 267, 318, or 707 of the Internal
40 Revenue Code, to the new microbusiness, shall be aggregated with

1 the gross receipts derived from or attributable to the state of the
2 new microbusiness to determine whether the new microbusiness
3 qualifies for the reduced annual tax under this subdivision.

4 SEC. 2. Section 17941 of the Revenue and Taxation Code is
5 amended to read:

6 17941. (a) For each taxable year beginning on or after January
7 1, 1997, a limited liability company doing business in this state,
8 as defined in Section 23101, shall pay annually to this state a tax
9 for the privilege of doing business in this state in an amount equal
10 to the applicable amount specified in paragraph (1) of subdivision
11 (d) of Section 23153 for the taxable year.

12 (b) (1) In addition to any limited liability company that is doing
13 business in this state and is therefore subject to the tax imposed
14 by subdivision (a), for each taxable year beginning on or after
15 January 1, 1997, a limited liability company shall pay annually
16 the tax prescribed in subdivision (a) if articles of organization have
17 been accepted, or a certificate of registration has been issued, by
18 the office of the Secretary of State. The tax shall be paid for each
19 taxable year, or part thereof, until a certificate of cancellation of
20 registration or of articles of organization is filed on behalf of the
21 limited liability company with the office of the Secretary of State.

22 (2) If a taxpayer files a return with the Franchise Tax Board that
23 is designated as its final return, the Franchise Tax Board shall
24 notify the taxpayer that the annual tax shall continue to be due
25 annually until a certificate of dissolution is filed with the Secretary
26 of State pursuant to Section 17707.08 of the Corporations Code
27 or a certificate of cancellation is filed with the Secretary of State
28 pursuant to Section 17708.06 of the Corporations Code.

29 (c) The tax assessed under this section shall be due and payable
30 on or before the 15th day of the fourth month of the taxable year.

31 (d) For purposes of this section, "limited liability company"
32 means an organization, other than a limited liability company that
33 is exempt from the tax and fees imposed under this chapter
34 pursuant to Section 23701h or 23701x, that is formed by one or
35 more persons under the law of this state, any other country, or any
36 other state, as a "limited liability company" and that is not taxable
37 as a corporation for California tax purposes.

38 (e) Notwithstanding anything in this section to the contrary, if
39 the office of the Secretary of State files a certificate of cancellation
40 pursuant to Section 17707.02 of the Corporations Code for any

1 limited liability company, then paragraph (1) of subdivision (f) of
2 Section 23153 shall apply to that limited liability company as if
3 the limited liability company were properly treated as a corporation
4 for that limited purpose only, and paragraph (2) of subdivision (f)
5 of Section 23153 shall not apply. Nothing in this subdivision
6 entitles a limited liability company to receive a reimbursement for
7 any annual taxes or fees already paid.

8 (f) (1) Notwithstanding any provision of this section to the
9 contrary, a limited liability company that is a small business solely
10 owned by a deployed member of the United States Armed Forces
11 shall not be subject to the tax imposed under this section for any
12 taxable year the owner is deployed and the limited liability
13 company operates at a loss or ceases operation.

14 (2) The Franchise Tax Board may promulgate regulations as
15 necessary or appropriate to carry out the purposes of this
16 subdivision, including a definition for “ceases operation.”

17 (3) For the purposes of this subdivision, all of the following
18 definitions apply:

19 (A) “Deployed” means being called to active duty or active
20 service during a period when a Presidential Executive order
21 specifies that the United States is engaged in combat or homeland
22 defense. “Deployed” does not include either of the following:

23 (i) Temporary duty for the sole purpose of training or processing.
24 (ii) A permanent change of station.

25 (B) “Operates at a loss” means a limited liability company’s
26 expenses exceed its receipts.

27 (C) “Small business” means a limited liability company with
28 total income from all sources derived from, or attributable, to the
29 state of two hundred fifty thousand dollars (\$250,000) or less.

30 (4) This subdivision shall become inoperative for taxable years
31 beginning on or after January 1, 2018.

32 (g) (1) Notwithstanding subdivision (a), (b), or (f), for taxable
33 years beginning on or after January 1, 2017, *and on or before*
34 *January 1, 2020*, every limited liability company that is a new
35 microbusiness shall, for each of the ~~first five~~ *initial* taxable years
36 of its existence *that begin on or before January 1, 2020, not to*
37 *exceed five taxable years*, for which it qualifies as a new
38 microbusiness, pay to the state an annual tax of:

39 (A) Two hundred dollars (\$200) for a new microbusiness that
40 reasonably estimates it will have gross receipts, less returns and

allowances, derived from or attributable to this state for the taxable year of fifty thousand dollars (\$50,000) or less.

(B) Four hundred dollars (\$400) for a new microbusiness that reasonably estimates it will have gross receipts, less returns and allowances, derived from or attributable to this state for the taxable year of one hundred thousand dollars (\$100,000) or less, but more than fifty thousand dollars (\$50,000).

(C) Six hundred dollars (\$600) for a new microbusiness that reasonably estimates it will have gross receipts, less returns and allowances, derived from or attributable to this state for the taxable year of one hundred fifty thousand dollars (\$150,000) or less, but more than one hundred thousand dollars (\$100,000).

(2) For purposes of this subdivision, the following definitions shall apply:

(A) (i) “Gross receipts, less returns and allowances” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(ii) “Gross receipts, less returns and allowances, derived from or attributable to this state” shall be determined using the rules for assigning sales under Sections 25135 and 25136 and the regulations thereunder, as modified by the regulations under Section 25137, other than those provisions that exclude receipts from the sales factor.

(B) “New microbusiness” means a limited liability company that on or after January 1, 2017, is organized under the laws of this state or has qualified to transact intrastate business in this state and has first commenced doing business in this state on or after the time of its organization. In determining whether the taxpayer has first commenced doing business in this state during the taxable year, subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply, except that “new microbusiness” shall be substituted for “new business.”

(3) For purposes of this subdivision, the gross receipts derived from or attributable to the state of any other business, in whatever form conducted, that is owned, directly or indirectly, by persons, within the meaning of Section 17007, that are treated as related, within the meaning of Section 267, 318, or 707 of the Internal Revenue Code, to the new microbusiness, shall be aggregated with

1 the gross receipts derived from or attributable to the state of the
2 new microbusiness to determine whether the new microbusiness
3 qualifies for the reduced annual tax under this subdivision.

4 (4) For any taxable year beginning on or after January 1, 2017,
5 if a limited liability company has qualified to pay a reduced annual
6 tax under this subdivision for any taxable year, but in that taxable
7 year, the limited liability company's gross receipts, less returns
8 and allowances, derived from or attributable to this state, exceed
9 the amount specified for that reduced amount, an additional tax in
10 an amount equal to six hundred dollars (\$600), four hundred dollars
11 (\$400), or two hundred dollars (\$200), as applicable, for that
12 taxable year shall be due and payable by the limited liability
13 company on the due date of its return, without regard to extension,
14 for that taxable year.

15 SEC. 3. Section 17948 of the Revenue and Taxation Code is
16 amended to read:

17 17948. (a) For each taxable year beginning on or after January
18 1, 1997, every limited liability partnership doing business in this
19 state, as defined in Section 23101, and required to file a return
20 under Section 18633 shall pay annually to the Franchise Tax Board
21 a tax for the privilege of doing business in this state in an amount
22 equal to the applicable amount specified in paragraph (1) of
23 subdivision (d) of Section 23153 for the taxable year.

24 (b) In addition to any limited liability partnership that is doing
25 business in this state and therefore is subject to the tax imposed
26 by subdivision (a), for each taxable year beginning on or after
27 January 1, 1997, every registered limited liability partnership that
28 has registered with the Secretary of State pursuant to Section 16953
29 of the Corporations Code and every foreign limited liability
30 partnership that has registered with the Secretary of State pursuant
31 to Section 16959 of the Corporations Code shall pay annually the
32 tax prescribed in subdivision (a). The tax shall be paid for each
33 taxable year, or part thereof, until any of the following occurs:

34 (1) A notice of cessation is filed with the Secretary of State
35 pursuant to subdivision (b) of Section 16954 or 16960 of the
36 Corporations Code.

37 (2) A foreign limited liability partnership withdraws its
38 registration pursuant to subdivision (a) of Section 16960 of the
39 Corporations Code.

1 (3) The registered limited liability partnership or foreign limited
2 liability partnership has been dissolved and finally wound up.

3 (c) The tax assessed under this section shall be due and payable
4 on the date the return is required to be filed under Section 18633.

5 (d) If a taxpayer files a return with the Franchise Tax Board that
6 is designated as its final return, the Franchise Tax Board shall
7 notify the taxpayer that the annual tax shall continue to be due
8 annually until a certificate of cancellation is filed with the Secretary
9 of State pursuant to Section 16954 or 16960 of the Corporations
10 Code.

11 (e) (1) Notwithstanding subdivision (a) or (b), for taxable years
12 beginning on or after January 1, 2017, *and on or before January*
13 *1, 2020*, every limited liability partnership that is a new
14 microbusiness shall, for each year of the ~~first five~~ *initial* taxable
15 years of its existence *that begin on or before January 1, 2020, not*
16 *to exceed five taxable years*, for which it qualifies as a new
17 microbusiness, pay annually to the state an annual tax of:

18 (A) Two hundred dollars (\$200) for a new microbusiness that
19 has gross receipts, less returns and allowances, derived from or
20 attributable to this state for the taxable year of fifty thousand dollars
21 (\$50,000) or less.

22 (B) Four hundred dollars (\$400) for a new microbusiness that
23 has gross receipts, less returns and allowances, derived from or
24 attributable to this state for the taxable year of one hundred
25 thousand dollars (\$100,000) or less, but more than fifty thousand
26 dollars (\$50,000).

27 (C) Six hundred dollars (\$600) for a new microbusiness that
28 has gross receipts, less returns and allowances, derived from or
29 attributable to this state for the taxable year of one hundred fifty
30 thousand dollars (\$150,000) or less, but more than one hundred
31 thousand dollars (\$100,000).

32 (2) For purposes of this subdivision, the following definitions
33 shall apply:

34 (A) (i) “Gross receipts, less returns and allowances,” means
35 the sum of the gross receipts from the production of business
36 income, as defined in subdivision (a) of Section 25120, and the
37 gross receipts from the production of nonbusiness income, as
38 defined in subdivision (d) of Section 25120.

39 (ii) “Gross receipts, less returns and allowances, derived from
40 or attributable to this state” shall be determined using the rules for

1 assigning sales under Sections 25135 and 25136 and the regulations
2 thereunder, as modified by the regulations under Section 25137,
3 other than those provisions that exclude receipts from the sales
4 factor.

5 (B) “New microbusiness” means a limited liability partnership
6 that on or after January 1, 2017, is organized under the laws of
7 this state or has qualified to transact intrastate business in this state
8 and has first commenced doing business in this state on or after
9 the time of its organization. In determining whether the taxpayer
10 has first commenced doing business in this state during the taxable
11 year, subdivision (f) of Section 17276, without application of
12 paragraph (7) of that subdivision, shall apply, except that “new
13 microbusiness” shall be substituted for “new business.”

14 (3) For purposes of this subdivision, the gross receipts derived
15 from or attributable to the state of any other business, in whatever
16 form conducted, that is owned, directly or indirectly, by persons,
17 within the meaning of Section 17007, that are treated as related,
18 within the meaning of Section 267, 318, or 707 of the Internal
19 Revenue Code, to the new microbusiness, shall be aggregated with
20 the gross receipts derived from or attributable to the state of the
21 new microbusiness to determine whether the new microbusiness
22 qualifies for the reduced annual tax under this subdivision.

23 SEC. 4. Section 23153 of the Revenue and Taxation Code is
24 amended to read:

25 23153. (a) Every corporation described in subdivision (b) shall
26 be subject to the minimum franchise tax specified in subdivision
27 (d) from the earlier of the date of incorporation, qualification, or
28 commencing to do business within this state, until the effective
29 date of dissolution or withdrawal as provided in Section 23331 or,
30 if later, the date the corporation ceases to do business within the
31 limits of this state.

32 (b) Unless expressly exempted by this part or the California
33 Constitution, subdivision (a) shall apply to each of the following:

34 (1) Every corporation that is incorporated under the laws of this
35 state.

36 (2) Every corporation that is qualified to transact intrastate
37 business in this state pursuant to Chapter 21 (commencing with
38 Section 2100) of Division 1 of Title 1 of the Corporations Code.

39 (3) Every corporation that is doing business in this state.

1 (c) The following entities are not subject to the minimum
2 franchise tax specified in this section:

3 (1) Credit unions.

4 (2) Nonprofit cooperative associations organized pursuant to
5 Chapter 1 (commencing with Section 54001) of Division 20 of the
6 Food and Agricultural Code that have been issued the certificate
7 of the board of supervisors prepared pursuant to Section 54042 of
8 the Food and Agricultural Code. The association shall be exempt
9 from the minimum franchise tax for five consecutive taxable years,
10 commencing with the first taxable year for which the certificate
11 is issued pursuant to subdivision (b) of Section 54042 of the Food
12 and Agricultural Code. This paragraph only applies to nonprofit
13 cooperative associations organized on or after January 1, 1994.

14 (d) (1) Except as provided in paragraph (2), paragraph (1) of
15 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
16 of Section 23181, and paragraph (1) of subdivision (c) of Section
17 23183, corporations subject to the minimum franchise tax shall
18 pay annually to the state a minimum franchise tax of eight hundred
19 dollars (\$800).

20 (2) The minimum franchise tax shall be twenty-five dollars
21 (\$25) for each of the following:

22 (A) A corporation formed under the laws of this state whose
23 principal business when formed was gold mining, which is inactive
24 and has not done business within the limits of the state since 1950.

25 (B) A corporation formed under the laws of this state whose
26 principal business when formed was quicksilver mining, which is
27 inactive and has not done business within the limits of the state
28 since 1971, or has been inactive for a period of 24 consecutive
29 months or more.

30 (3) For purposes of paragraph (2), a corporation shall not be
31 considered to have done business if it engages in business other
32 than mining.

33 (e) Notwithstanding subdivision (a), for taxable years beginning
34 on or after January 1, 1999, and before January 1, 2000, every
35 “qualified new corporation” shall pay annually to the state a
36 minimum franchise tax of five hundred dollars (\$500) for the
37 second taxable year. This subdivision shall apply to any corporation
38 that is a qualified new corporation and is incorporated on or after
39 January 1, 1999, and before January 1, 2000.

1 (1) The determination of the gross receipts of a corporation, for
2 purposes of this subdivision, shall be made by including the gross
3 receipts of each member of the commonly controlled group, as
4 defined in Section 25105, of which the corporation is a member.

5 (2) “Gross receipts, less returns and allowances reportable to
6 this state,” means the sum of the gross receipts from the production
7 of business income, as defined in subdivision (a) of Section 25120,
8 and the gross receipts from the production of nonbusiness income,
9 as defined in subdivision (d) of Section 25120.

10 (3) “Qualified new corporation” means a corporation that is
11 incorporated under the laws of this state or has qualified to transact
12 intrastate business in this state, that begins business operations at
13 or after the time of its incorporation and that reasonably estimates
14 that it will have gross receipts, less returns and allowances,
15 reportable to this state for the taxable year of one million dollars
16 (\$1,000,000) or less. “Qualified new corporation” does not include
17 any corporation that began business operations as a sole
18 proprietorship, a partnership, or any other form of business entity
19 prior to its incorporation. This subdivision shall not apply to any
20 corporation that reorganizes solely for the purpose of reducing its
21 minimum franchise tax.

22 (4) This subdivision shall not apply to limited partnerships, as
23 defined in Section 17935, limited liability companies, as defined
24 in Section 17941, limited liability partnerships, as described in
25 Section 17948, charitable corporations, as described in Section
26 23703, regulated investment companies, as defined in Section 851
27 of the Internal Revenue Code, real estate investment trusts, as
28 defined in Section 856 of the Internal Revenue Code, real estate
29 mortgage investment conduits, as defined in Section 860D of the
30 Internal Revenue Code, qualified Subchapter S subsidiaries, as
31 defined in Section 1361(b)(3)(B) of the Internal Revenue Code,
32 or to the formation of any subsidiary corporation, to the extent
33 applicable.

34 (5) For any taxable year beginning on or after January 1, 1999,
35 and before January 1, 2000, if a corporation has qualified to pay
36 five hundred dollars (\$500) for the second taxable year under this
37 subdivision, but in its second taxable year, the corporation’s gross
38 receipts, as determined under paragraphs (1) and (2), exceed one
39 million dollars (\$1,000,000), an additional tax in the amount equal
40 to three hundred dollars (\$300) for the second taxable year shall

1 be due and payable by the corporation on the due date of its return,
2 without regard to extension, for that year.

3 (f) (1) (A) Notwithstanding subdivision (a), every corporation
4 that incorporates or qualifies to do business in this state on or after
5 January 1, 2000, shall not be subject to the minimum franchise tax
6 for its first taxable year.

7 (B) Notwithstanding subdivision (a), for taxable years beginning
8 on or after January 1, 2017, *and on or before January 1, 2020*,
9 every corporation that is a new microbusiness ~~up to its first five~~
10 ~~taxable years shall annually~~ *shall, for each taxable year*
11 *immediately following its first taxable year that begins on or before*
12 *January 1, 2020, not to exceed four taxable years, for which it*
13 *qualifies as a new microbusiness*, pay to the state ~~a an annual~~
14 minimum franchise tax in an amount specified in clause ~~(i) for its~~
15 ~~second, third, fourth, and fifth taxable years of its existence for~~
16 ~~which it qualifies as a new microbusiness. (i).~~

17 (i) (I) Two hundred dollars (\$200) for a new microbusiness
18 that reasonably estimates that it will have gross receipts, less
19 returns and allowances, derived from or attributable to this state
20 for the taxable year of fifty thousand dollars (\$50,000) or less.

21 (II) Four hundred dollars (\$400) for a new microbusiness that
22 reasonably estimates that it will have gross receipts, less returns
23 and allowances, derived from or attributable to this state for the
24 taxable year of one hundred thousand dollars (\$100,000) or less,
25 but more than fifty thousand dollars (\$50,000).

26 (III) Six hundred dollars (\$600) for a new microbusiness that
27 reasonably estimates that it will have gross receipts, less returns
28 and allowances, derived from or attributable to this state for the
29 taxable year of one hundred fifty thousand dollars (\$150,000) or
30 less, but more than one hundred thousand dollars (\$100,000).

31 (ii) For purposes of this subparagraph, the following definitions
32 shall apply:

33 (I) (ia) “Gross receipts, less returns and allowances,” means
34 the sum of the gross receipts from the production of business
35 income, as defined in subdivision (a) of Section 25120, and the
36 gross receipts from the production of nonbusiness income, as
37 defined in subdivision (d) of Section 25120.

38 (ib) “Gross receipts, less returns and allowances, derived from
39 or attributable to this state” shall be determined using the rules for
40 assigning sales under Sections 25135 and 25136 and the regulations

1 thereunder, as modified by the regulations under Section 25137,
2 other than those provisions that exclude receipts from the sales
3 factor.

4 (II) “New microbusiness” means a limited liability company
5 that on or after January 1, 2017, is organized under the laws of
6 this state or has qualified to transact intrastate business in this state
7 and has first commenced doing business in this state on or after
8 the time of its organization. In determining whether the taxpayer
9 has first commenced doing business in this state during the taxable
10 year, subdivision (f) of Section 17276, without application of
11 paragraph (7) of that subdivision, shall apply, except that “new
12 microbusiness” shall be substituted for “new business.”

13 (iii) For purposes of this subparagraph, the gross receipts derived
14 from or attributable to the state of any other business, in whatever
15 form conducted, that is owned, directly or indirectly, by persons,
16 within the meaning of Section 17007, that are treated as related,
17 within the meaning of Section 267, 318, or 707 of the Internal
18 Revenue Code, to the new microbusiness, shall be aggregated with
19 the gross receipts derived from or attributable to the state of the
20 new microbusiness to determine whether the new microbusiness
21 qualifies for the reduced minimum franchise tax under this
22 subparagraph.

23 (iv) For any taxable year beginning on or after January 1, 2017,
24 if a corporation has qualified to pay a reduced minimum franchise
25 tax under this subparagraph for any taxable year, but in that taxable
26 year, the corporation’s gross receipts, less returns and allowances,
27 derived from or attributable to this state, exceed the amount
28 specified for that reduced amount, an additional tax in an amount
29 equal to six hundred dollars (\$600), four hundred dollars (\$400),
30 or two hundred dollars (\$200), as applicable, for that taxable year
31 shall be due and payable by the corporation on the due date of its
32 return, without regard to extension, for that taxable year.

33 (2) Subparagraph (A) of paragraph (1) shall not apply to limited
34 partnerships, as defined in Section 17935, limited liability
35 companies, as defined in Section 17941, limited liability
36 partnerships, as described in Section 17948, charitable corporations,
37 as described in Section 23703, regulated investment companies,
38 as defined in Section 851 of the Internal Revenue Code, real estate
39 investment trusts, as defined in Section 856 of the Internal Revenue
40 Code, real estate mortgage investment conduits, as defined in

1 Section 860D of the Internal Revenue Code, and qualified
2 Subchapter S subsidiaries, as defined in Section 1361(b)(3)(B) of
3 the Internal Revenue Code, to the extent applicable.

4 (3) Subparagraph (A) of paragraph (1) shall not apply to any
5 corporation that reorganizes solely for the purpose of avoiding
6 payment of its minimum franchise tax.

7 (g) Notwithstanding subdivision (a), a domestic corporation, as
8 defined in Section 167 of the Corporations Code, that files a
9 certificate of dissolution in the office of the Secretary of State
10 pursuant to subdivision (b) of Section 1905 of the Corporations
11 Code, prior to its amendment by the act amending this subdivision,
12 and that does not thereafter do business shall not be subject to the
13 minimum franchise tax for taxable years beginning on or after the
14 date of that filing.

15 (h) The minimum franchise tax imposed by paragraph (1) of
16 subdivision (d) shall not be increased by the Legislature by more
17 than 10 percent during any calendar year.

18 (i) (1) Notwithstanding subdivision (a) or (f), a corporation that
19 is a small business solely owned by a deployed member of the
20 United States Armed Forces shall not be subject to the minimum
21 franchise tax for any taxable year the owner is deployed and the
22 corporation operates at a loss or ceases operation.

23 (2) The Franchise Tax Board may promulgate regulations as
24 necessary or appropriate to carry out the purposes of this
25 subdivision, including a definition for “ceases operation.”

26 (3) For the purposes of this subdivision, all of the following
27 definitions apply:

28 (A) “Deployed” means being called to active duty or active
29 service during a period when a Presidential Executive order
30 specifies that the United States is engaged in combat or homeland
31 defense. “Deployed” does not include either of the following:

32 (i) Temporary duty for the sole purpose of training or processing.
33 (ii) A permanent change of station.

34 (B) “Operates at a loss” means negative net income as defined
35 in Section 24341.

36 (C) “Small business” means a corporation with total income
37 from all sources derived from, or attributable to, the state of two
38 hundred fifty thousand dollars (\$250,000) or less.

39 (4) This subdivision shall become inoperative for taxable years
40 beginning on or after January 1, 2018.

- 1 SEC. 5. This act provides for a tax levy within the meaning of
- 2 Article IV of the Constitution and shall go into immediate effect.

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